IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Bail Appl..No. 7200 of 2007(U)

(CRIME NO.40/2005 OF THE KUTHUPARAMBA POLICE STATION AND CBCID CRIME NO.404/CR/KNR/05)

PETITIONER/ACCUSED:

UCHUMMAL SHINOB, S/O.BHASKARAN,
AGED 29 YEARS, "HYMA NIVAS", KUTHUPARAMBA
AMSOM, AMBILAD DESOM, NIRMALAGIRI P.O.,
THALASSERY.

BY ADV. SRI.R.PARTHASARATHY

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J.

B.A.No.7200 of 2007

Dated this the 27th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner is the fourteenth accused. Altogether there are fourteen accused persons arrayed now. The accused persons face allegations for offences punishable inter alia under Sections 302, 436 and 396 I.P.C. Some of the co-accused have already been granted regular bail. Some others have been granted anticipatory bail. The alleged incident took place on 27/1/2005. The deceased was residing in the house where the occurrence took place along with the members of his family. The son of the brother of the deceased, one Santhosh was allegedly murdered by one Preman. There was an impression that the son of the deceased had set up the said Preman to murder the said Santhosh. Be that as it may, the allegation is that an unlawful assembly of miscreants trespassed into the house of the deceased on the night of 27/1/2005 armed with dangerous weapons. They allegedly unleashed an attack on the deceased who suffered injuries in that incident and succumbed to the injuries after some days. The

miscreants had also indulged in acts of arson, theft etc. In the F.I statement which was lodged on the next day there is only allegation against the first accused and some others. Long later, the statement of the de facto complainant was recorded by the police again on 14/3/2007. On the basis of the statement of the de facto complainant, the petitioner was brought on the array of accused. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. On account of animosity, such false allegation is being made to implicate the petitioner long after the incident. The de facto complainant had never stated that the petitioner was one of the miscreants who had trespassed into the house. It is significant that even now the de facto complainant does not attribute any specific overt acts against the petitioner. The petitioner is not alleged to have wielded any weapon also. On 14/3/2007, the de facto complainant states that she saw the petitioner at some place casually. She made enquiries. She ascertained the name of the petitioner and his father's name and thereafter in her further statement dated 14/3/2007 she revealed to the police her

information about the complicity of the petitioner. Accused 11 to 13 who were identically placed and were brought on the array of accused long later, have already been granted anticipatory bail. The learned counsel for the petitioner submits that the belated inclusion of the petitioner in the array of accused is mala fide and there is no tangible, acceptable and satisfactory data on which such a crucial and vital allegation could be raised against the petitioner. The petitioner is willing to co-operate with the investigating officer. Subject to any appropriate terms and conditions, the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor, taking note of the enormous delay from the date of the occurrence to the date on which the complicity of the petitioner was revealed to the police, does not oppose the application for anticipatory bail; but submits that appropriate conditions may be imposed in the interests of a fair, efficient and expeditious investigation.

4. Having considered all the relevant inputs, I am persuaded to agree that directions under Section 438 Cr.P.C can be issued in favour of the petitioner, considering the very

peculiar nature of the facts and circumstances of this case. I shall not advert to facts in detail. I do not intend to express any opinion on the acceptability of the allegations against the petitioner or the credibility of the data collected. Suffice it to say that subject to appropriate conditions which shall secure the interests of a proper, efficient and expeditious investigation, directions under Section 438 Cr.P.C can be issued in favour of the petitioner herein also as were issued in favour of accused 11 to 13 earlier.

5. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 04/12/2007. He shall be released on regular bail on condition that he executes a bond for Rs.50,000/-(Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m

and 5 p.m on 05/12/2007, 06/12/2007 and 07/12/2007. During this period, the investigating officer shall at liberty to interrogate the petitioner in custody and take all necessary steps for the proper investigation in this case. Thereafter the petitioner shall so appear on all Mondays and Fridays between 10 a.m and 12 noon for a period of two months and subsequently as and when directed by the investigating officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(iv) If he were arrested prior to 04/12/2007, he shall be released from custody on his executing a bond for Rs.50,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 04/12/2007.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007